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In re Application of : DECISION ON

LYSENKO et al

Application No.: 10/566,041

PCT No.: PCT/FR2004/050358

Int. Filing Date: 27 July 2004

Priority Date: 28 July 2003

Attorney Docket No.: BRV.10045

For: HYDROGEN RESERVOIR BASED
ON SILICON NANO-STRUCTURES

: PETITION UNDER

: 37 CFR 1.181

This decision is in response to the "REQUEST FOR CORRECTED NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 USC AND 37 CFR 1.495" filed 18 December 2006, which is being treated as a petition under 37 CFR 1.181, requesting that the correct date of filing date under 371(c) be changed from 13 October 2006 to 26 January 2006.

BACKGROUND

On 26 January 2006, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application as required by 35 U.S.C. 371(c)(2). However, an executed declaration was not submitted at such time.

On 02 October 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date." The Notice stated that the declaration must be submitted within two months from the date of this notice or 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 13 October 2006, applicants filed a second transmittal letter, which was accompanied by, inter alia, an executed declaration.

On 08 December 2006, the USPTO mailed a "NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 C.F.R. 1.495 (Form PCT/DO/EO/903)," indicating that date of receipt of 35 U.S.C. 371 (c)(1), (c)(2), and (c)(4) requirements is 13 October 2006, and a date of completion of all 35 USC 371 requirements is 13 October 2006.

On 18 December 2006, applicants filed the current petition pursuant 37 CFR 1.181 requesting a corrected filing receipt, stating that the correct filing date under 35 USC 371(C) is 26 January 2006, and not what is shown in the filing receipt as 13 October 2006.

DISCUSSION

The filing receipt correctly indicates that the National Stage papers were received on 26 January 2006. It indicates, *inter alia*, that a copy of the international application, and a copy of the international search report 26 January 2006. The U.S. basic national fee was received on 26 January 2006 and not as stated in the filing receipt- 13 October 2006.

However, the date that applicants completed the requirements under section (c) of 35 USC 371 is 13 October 2006, which is the date that an executed declaration was filed with the Office, and it is the date that the applicable sections of 35 USC 371 were met.

Accordingly, the date of receipt of 35 U.S.C. 371 (c)(1), (c)(2), and (c)(4) requirements is 13 October 2006, and a date of completion of all 35 USC 371 requirements is 13 October 2006, which the date that a proper executed declaration was filed in the application.

Thus, the filing receipt shows the correct date, which is 13 October 2006.

DECISION

The petition under 37 CFR 1.181 is **DISMISSED**.

If reconsideration of the merits of the petition under 37 CFR 1.181 is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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